# EXHIBIT 7

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

9:18 Civ. No. 1467 (GLS)(ATB)

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MATTHEW RAYMOND,

Plaintiff,

VIDEOCONFERENCE
DEPOSITION OF:
JOHN VALVO, M.D.

vs.

TROY MITCHELL, Lieutenant at Auburn Correctional Facility, CHARLES THOMAS, Correction Officer at Auburn Correctional Facility, THOMAS HARTE, Sergeant at Auburn Correctional Facility, THOMAS PHILLIPS, Correction Officer at Auburn Correctional Facility, THOMAS GIANCOLA, Correction Officer at Auburn Correctional Facility, HAROLD D. GRAHAM, Former Superintendent of Auburn Correctional Facility, BRIAN BAUERSFELD, Correctional Hearing Officer of Auburn Correctional Facility, BRIAN O'HORA, Correctional Officer at Auburn Correctional Facility, AIMEE HOPPINS, R.N., DR. DEBORAH GEER, and "JOHN DOE," Correction Officer at Auburn Correctional Facility,

Defendants.

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TRANSCRIPT of the testimony of JOHN VALVO, M.D. in the above-entitled matter, as taken by and before CELESTE A. GALBO, a Certified Court Reporter and Notary Public of the State of New Jersey, held via Zoom remote videoconferencing software, on March 11, 2022, commencing at 9:01 a.m.

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E X H I B I T S



(Exhibits received electronically by the reporter after the close of the deposition were marked and are attached to the transcript.)

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THE COURT REPORTER: Good morning, I'm Celeste Galbo, a Certified Court Reporter.

The attorneys participating in this deposition acknowledge that I am not physically present in the deposition room and that I will be reporting this deposition remotely. They further acknowledge that, in lieu of an oath administered in person, the witness will verbally declare his testimony in this matter under the penalty of perjury. The parties and their counsel consent to this arrangement and waive any objections to this manner of reporting.

Please indicate your agreement by stating your name and your agreement on the record, starting with plaintiff's counsel.

MS. ROSENFELD: Katie Rosenfeld; I agree.

MR. MACKEY: Patrick Mackey on behalf of defendants Mitchell, Thomas, Harte, Phillips, Giancola, Graham and Geer and I agree.

JOHN VALVO, M.D., stating a business address of 2420 Ridgeway Avenue, Rochester, New York 14626, having been duly sworn by the Notary Public, was examined and testified as follows:

EXAMINATION

BY MS. ROSENFELD:

Q. Good morning, Dr. Valvo. How are you?

A. Good morning, I'm fine. Yourself?

Q. Good, thanks. My name is Katie Rosenfeld. I am one of the lawyers for the plaintiff in this case, Matthew Raymond. As you know, we're here to conduct your deposition today.

Have you ever been deposed before, Dr. Valvo?

A. Yes.

Q. Great. Approximately how many times?

A. Perhaps a half dozen times.

Q. So you're generally familiar with how these things work, but I'll just give you a quick update in case it's been a while.

So, I'm going to ask you a series of questions and you'll do your best to respond to them. You understand that all your answers are under oath today, correct?

A. Yes.

Q. If you would like to take a break at any time, that's fine, just I would ask that you answer any pending questions before we take a break. Is that acceptable to you?

A. Yes.

Q. And we should do our best to give each other verbal answers, not head shakes for nods or yes and noes, um-hum because the court reporter is making a transcript. Do you understand that?

A. Yes.

Q. Thank you.

Dr. Valvo what if any documents did you review to prepare for your deposition today?

A. Well, I'll go through them one by one if you wish.

Q. Sure. Well, I have your report in front of me which we can mark as Exhibit 1 for your deposition. Do you have your report in front of you?

A. Yes, I do.

Q. Okay.

A. I do not have it in front of me, no, I do not. I have the records in front of me but I do not have my report per se but I can get that.

Q. Okay. Yeah, if you can pull that up so we're both looking at it right now, that would be great.

(Valvo Exhibit 1, report of Dr. John Valvo dated October 18, 2021, was deemed marked for identification.)

A. Yes, I have it.

Q. Okay. Excellent. And so on the first page of your report I see that you have listed one through 19, a number of documents that you reviewed to prepare your October 18, 2021 report, correct?

A. Yes.

Q. Okay. Are those the documents that you reviewed for your deposition today?

A. Yes.

Q. Did you review any other documents that are not listed as 1 through 19 to prepare for your deposition today?

A. I reviewed a rebuttal report by Dr. Vapnek. That's the only other document that's not listed as such.

Q. Okay.

MS. ROSENFELD: And just for the record, Celeste, it's Vapnek, V-A-P-N-E-K.

Q. Okay. So you're licensed to practice medicine in New York, Dr. Valvo?

A. Yes.

Q. Are you licensed to any other states?

A. No.

Q. Has your license to practice medicine ever been cancelled, revoked or suspended?

A. No.

Q. Do you hold any board certifications?

A. I am board certified in urology. Urology.

Q. And since when are you board certified in urology?

A. I believe 1983. 1985, I'm sorry.

Q. Am I correct that you are a physician in a private urology practice titled Center for Urology?

A. Yes.

Q. You see patients in your practice as part of the Center for Urology?

A. Yes.

Q. Do you hold any other positions, employment positions other than as a physician working at Center for Urology?

A. No.

Q. And how long have you been in practice as a urologist at the Center for Urology?

A. This is year 39.

Q. So, it looks like you completed a fellowship in -- excuse me.

It looks like you completed your residency in urology in 1983. Did you directly go

from your residency into private practice as a urologist?

A. Yes.

Q. Have you ever held any other employment positions besides your job as a physician at the Center for Urology?

A. No.

Q. And how long have you been doing work as an expert in litigation?

A. Well, it's hard to say for sure, but I've probably -- over the course of my career I've been asked to provide expert opinions on several cases. Several being not more than 10.

Q. Okay. So in the course of your entire career you think you served as an expert approximately ten times?

A. Yes.

Q. And have you ever served as an expert for Mr. Mackey's firm before?

A. I have not.

Q. And have you served as an expert in cases on behalf of defendants who were the parties being sued?

A. Yes.

Q. And have you served as an expert in

cases on behalf of a plaintiff, the person who's bringing the lawsuit?

A. Yes.

Q. And were these cases filed in federal court, if you know?

A. I do not believe they were.

Q. Okay. And just to clarify, when I ask you how many times you've served as an expert, I'm not just asking you about times that you've written a report or sat for a deposition, I'm asking any time that you worked with lawyers to consult about a legal matter as a urologist. Did you understand that to be my question?

A. Yes, I did.

Q. And -- excuse me. So, other than your work on this case in 2021, did you serve as an expert in any other cases in 2021?

A. No.

Q. And what about in 2020, did you serve as an expert in any cases in 2020?

A. No.

Q. What about in 2019, any cases that you were an expert in 2019?

A. I do not recall.

Q. Okay. Have you ever testified in

court?

A. Yes.

Q. How many times have you testified in court?

A. Probably four to five times.

Q. So, just to make sure I understand, you believe that you've served as an expert in your entire career approximately ten times and in approximately half of those cases you had to testify in court?

A. I believe that would be a fair assumption, yes.

Q. And when was the last time that you testified in court approximately?

A. One month ago.

Q. And what was the matter that you were testifying in?

A. It was a motor vehicle accident.

Q. Were you an expert for the plaintiff or for the defense?

A. I was an expert for the plaintiff.

Q. And what court were you in, if you know?

A. Canandaigua New York Court.

Q. So it's a state court you believe?

A. That's correct.

Q. What was the nature of the person's injury that you testified about?

A. The nature of the injury was a motor vehicle accident where the plaintiff was struck by a moving vehicle and suffered significant injuries related to his nervous system and consequently had urologic issues as well.

Q. Have you served as an expert in other cases where there was an issue about a person being -- suffering from a neurogenic bladder?

A. I do not believe, my recollection, no.

Q. And are you -- how do lawyers who want to work with you as an expert find you?

MR. MACKEY: Objection to form.

Go ahead.

Q. If you know. Are you listed on any expert services? Are you --

A. No.

Q. Okay.

A. We have a website with a hospital which basically demonstrates my credentials and perhaps word of mouth, but I do not go out and list it.

Q. And when you say we have a website with the hospital, can you explain what you mean by that?

A. Well, I'm the director of robotic surgery at the hospital. And so the hospital has physicians in various key positions in their institution which highlight certain opportunities for patients. And I'm director of the robotic program at Rochester General Hospital.

Q. So, I'm looking at the second page of your resume and it says "Faculty Appointment, University of Rochester School of Medicine and Dentistry, Clinical Associate Professor". Is that a title that you currently hold?

A. That has been -- no, that terminated that degree. We had that with our affiliation with the university. The hospitals basically interrupted that and so with that the honorary degrees were rescinded.

Q. Okay. When did that affiliation through which you held that title end?

A. Just a few short years ago.

Q. Okay. Can you tell me what year?

A. No.

Q. Was it before the pandemic, before 2020?

A. Yes.

Q. So you're not a clinical associate

professor at the University of Rochester School of Medicine, correct?

A. Not at this present time.

Q. Okay. And you haven't been since at least 2019, correct?

A. That's correct.

Q. Okay. And when you were a clinical associate professor, you said it was an honorary title? I don't understand what you mean. If you could clarify, please.

A. We had residents come to our institution for training, and so in order for us to provide the proper academic environment, myself and my colleagues were assigned titles with the university. When the residents were removed, the titles went away.

Q. I see. So at your medical practice you had residents coming to do placements in your office? Is that fair to say?

A. No, basically hospital work; operating room assisting and learning emergency room urologic care.

Q. So when you went into a hospital, you would have residents assisting you with procedures and because you were supervising them, you were

titled a clinical associate professor; is that correct?

A. That's pretty much what that amounted to, yes.

Q. Okay. And in your role as executive director of the center for -- say it again.

A. Pollisseni.

Q. Pollisseni, that's P-O-L-I-S-S-E-N-I. Executive director for the Pollisseni Center for Robotic and Minimally Invasive Surgery at Rochester General Hospital, is that a title that you currently hold?

A. Yes.

Q. And what is Titan Medical, please?

A. Titan Medical is an upstart robotic company based in Canada.

Q. And it says that you're senior VP of medical affairs for that company; is that correct?

A. That's correct.

Q. And what are your duties in connection with that role?

A. Basically consultation work regarding the development of the new robotic, surgical robotic system.

Q. Okay. And how much of your work is

spent serving patients as part of your urologic practice versus as senior VP of medical affairs for Titan Medical?

A. 100 percent I see patients and a very small part of my time is as a consultant. It's a periodic consultation. It's not something that is on a daily basis.

Q. I see. And is that a payable, that you're paid to do that consulting?

A. No.

Q. You just do it out of professional interest?

A. Correct. Yes.

Q. Okay. And have you written or published any work in your field?

A. Yes, I have.

Q. Okay. I don't see it listed on your CV, so could you just describe perhaps what your publications are in general terms?

A. These were articles that covered the scope of general urology written early on in my practice and as a resident.

Q. When was the last time that you published a piece like that?

A. I would say probably 20 years ago.

Q. Do you have a list of your publications somewhere in your possession?

A. Yes, that could be provided to you.

(REQ) MS. ROSENFELD: Okay. I just request after the deposition if we could please get a copy of Dr. Valvo's publications.

Q. Have you ever been disciplined by any medical board or authority?

A. No.

Q. And have you ever been found by a court to be unqualified to testify as an expert?

A. No.

Q. Have you ever received any kind of ethical sanctions from any oversight board?

A. No.

Q. Have you ever been convicted of any crimes?

A. No.

Q. Have you ever been sued for medical malpractice?

A. No.

Q. Are you aware of any decisions where a court has examined your testimony or findings whether in a positive or negative way?

A. No.

(REQ) Q. Okay. So, because we're in federal court at some point your attorney will be asked to provide me with a list of the cases in which you've given deposition or other testimony within the last four years.

MS. ROSENFELD: And so I'll just put on the record that we need to follow up with that I think on both sides, Pat.

Q. Okay. So let's talk about your opinions about Mr. Raymond. My first question for you, Dr. Valvo, is based on the records that you reviewed which I see listed at 1 through 19 in your report, is it your opinion that Mr. Raymond had any urologic conditions before September 14, 2016?

A. No, I do not believe he did.

Q. And is it your view that Mr. Raymond has neurogenic bladder today?

A. Yes.

Q. And do you have an opinion about when Mr. Raymond developed neurogenic bladder?

A. The earliest objective evidence we have was I believe sometime in late 2016. I believe that was the case.

Q. Okay. And when you say that the earliest objective evidence that you think we have is

sometime in late 2016, can you be any more specific about what you're referring to?

A. He was having difficulty voiding and was in consultation and found to be in urinary retention and required catheterization.

Q. So, as you know, the incident in which my client reports that he was assaulted was on September 14, 2016. You're aware of that date as the date of validation?

A. Yes.

Q. Okay. And just to make sure that I understand your testimony, before September 14, 2016, it's your opinion that Mr. Raymond did not suffer from any urologic conditions, correct?

A. Correct.

Q. Sometime in late 2016, after September 16, 2016, is it your view that he began to exhibit symptoms of neurogenic bladder?

A. Yes, and I believe it was either in late '16 or January of '17. I don't actually recall but it was sometime in that time frame.

Q. And it's also your view that he continues to suffer from this condition today; is that correct?

A. Yes.

Q. What is your opinion, if you have one, about what caused Mr. Raymond to develop neurogenic bladder in late 2016 or early 2017 as you described?

A. I do not have an opinion.

Q. Do you, based on your review of the records in the case 1 to 19, do you have any explanation for why Mr. Raymond developed neurogenic bladder at that time?

MR. MACKEY: Object to form.

A. No.

Q. Is it your view, Dr. Valvo, that the neurogenic bladder that Mr. Raymond suffers from occurred spontaneously?

A. The earliest evidence we have was that time when he went to the infirmary. I do not have an understanding as to how it happened. And sometimes this condition can occur without significant precedent causes.

Q. So I'd like to just sort of be a little more specific about what your view of the early signs of neurogenic bladder condition are. Are you able to put a date at all on what you would call the first symptom of the neurogenic bladder that arose for Mr. Raymond?

MR. MACKEY: I'll object to asked and

answered.

Go ahead, Dr. Valvo.

A. I can't tell you when it began. All I can tell you is when it manifested itself and that's the earliest time that we have any objective evidence that he had a problem.

Q. Understood. And I know you said earlier that you thought that this was sometime in late 2016 or early 2017. I just would like to be a little bit more precise about what date you think the symptoms emerged.

Do you have a copy of Dr. Leitch's expert report in front of you or could you pull one, up, please?

A. I'm having a tough time trying to find that.

Q. Okay. I understand.

MS. ROSENFELD: Pat, would it be possible for you to email Dr. Valvo a copy of that report so he can pull it up or shall I email it to you if you don't have it on the top of your email?

MR. MACKEY: I could probably -- I assume you're not planning to put it up on the screen or anything like that?

MS. ROSENFELD: Would that be easier?

Maybe I'll just do that. That's a good idea. Okay.
BY MS. ROSENFELD:
Q. So, Dr. Valvo, you noted in your report at item 19 that you had previously reviewed Dr. Leitch's report, correct?
A. Yes.
Q. Okay. So I'm going to just show you on this screen a copy of that report and ask you a few questions about it.
MR. MACKEY: Let me do this before you do that. Dr. Valvo, what's easier for you, to look at it on the screen or do you want me to email --
THE WITNESS: I think she can point on the screen at the points she wants to.
MR. MACKEY: I mean, if you wanted to, I can email you a copy.
THE WITNESS: Well, let's see how well I can read it.
MR. MACKEY: Whatever works best for you. Whatever is easiest for you.
THE WITNESS: That's going to be more expeditious, so why don't we do that.
MR. MACKEY: Okay.
THE WITNESS: Are we using the screen?
MS. ROSENFELD: We are. Just one

moment, I'm getting it set up for you.

MR. MACKEY: I'm stepping off screen for one second.

MS. ROSENFELD: Sorry, I'm having a little tech issue.

BY MS. ROSENFELD:

Q. Okay. Dr. Valvo, do you see on your screen in front of you a document that has the title Sherry A. Leitch, M.D. at the stop?

A. Yes.

Q. Great.

MS. ROSENFELD: And, Celeste, we can mark this one as Valvo Exhibit 2.

(Valvo Exhibit 2, report of Sherry A. Leitch, M.D. dated July 23, 2021, was deemed marked for identification.)

Q. So, Dr. Valvo, I'm just going to scroll down to -- so it says -- this is Dr. Leitch's report. It says the following records were reviewed. And then she gets to the portion of the report where she's looking at Mr. Raymond's medical records from the New York State Department of Corrections which you also reviewed, I believe, at Item 2 on your report; is that correct?

A. Yes.

Q. Okay. So you'll see that the first entry is 12/22/2015 under her heading. And then I'm just going to scroll down so we can move to these sort of -- what page of the report are we at? We're on page 6 of her report. And do you see that the top entry is 9/26/2016?

A. Yes.

Q. So using Dr. Leitch's summary, are you able to say with any greater specificity when you believe the first symptoms of the neurogenic bladder condition were reported by Mr. Raymond?

A. No, I'm not.

Q. Okay. What would you need to look at to answer that question?

A. I'd need to know -- I'd need to have examined the patient myself and have had more specific diagnosis other than genitourinary symptoms. I don't know what that means.

Q. So a little while ago in your deposition you said that you thought that the neurogenic bladder symptoms were first reported in late 2016 early 2017, was what I thought you testified. So what I'm asking you is what records did you look at to make that conclusion?

A. When he went to the infirmary and was

found to have a distended bladder unable to urinate.

Q. And when you say when he went to the infirmary, are you referring to an infirmary within the New York State Department of Correction system or at Upstate Medical Center or something else?

A. I believe he was seen originally in the infirmary and then sent to Upstate Medical systems for a catheterization.

Q. Okay. So your view is that the first sign of this condition would have been with the report of a distended bladder; is that correct?

A. With his inability to void, yes.

Q. Okay. And then he went to Upstate Medical Center in early 2017. And is dysuria, D-Y-S-U-R-I-A, is that a symptom of neurogenic bladder?

A. Not in my diagnostic treat, no.

Q. And what about the diagnosis of urinary retention after a bladder scan demonstrated over 600 cc's of urine in his distended bladder, would that be a symptom of neurogenic bladder?

A. Yes.

Q. Okay.

A. And that's what I'm referring to.

Q. Okay. So that's a January 19, 2017,

encounter at Upstate University Hospital. So we could put the date that -- that date as a clear symptom of neurogenic bladder; is that fair to say?

MR. MACKEY: I'll object to form.

A. Yes.

Q. Okay. And so prior to that, as you sit here today, you're not aware of whether there were any symptoms reported to the -- before that date that were consistent with neurogenic bladder? Am I understanding your testimony correctly?

A. Yes.

Q. And but you did review the New York State Department of Corrections' records, right?

A. Yes.

Q. What are other -- before the presentation to Upstate Medical Center with -- where he was diagnosed with urinary retention after a bladder scan, in patients that you've seen, what are typically other early symptoms that they report of the neurogenic bladder?

MR. MACKEY: Are you just asking generally?

MS. ROSENFELD: Yeah, in his experience with patients.

A. Generally, just difficulty voiding and

slowness of the stream, a fullness on the bladder area of incomplete evacuation, and then, again, objectively finding a large amount of urine in the bladder.

Q. Okay. Is 600 cc's a large amount of urine in the bladder?

A. Yes.

Q. Okay. And is burning with urination sometimes a symptom of neurogenic bladder?

A. No.

Q. What about blood in the urine?

A. No.

Q. What about testicular and groin pain?

A. No.

Q. Okay. So, Mr. Raymond after he reported these signs and symptoms of urinary retention and received the neurogenic bladder diagnosis, how -- can you describe based on your review of the records what the cause of the neurogenic bladder problem was?

MR. MACKEY: I'll object to form.

A. Well, he had a catheterization, he had immediate relief of his distended bladder and then he was sent to Upstate for a suprapubic tube as opposed to a urethra catheter which I believe he denied

wanting to have done. So they put a suprapubic tube in which is a tube placed in the bladder in the lower abdomen so that the bladder will drain. He then went about having a urodynamic test and further scoping which failed to reveal any evidence of obstructive etiology.

Q. And you're aware that Mr. Raymond as you note in your report underwent a bladder augmentation surgery in 2020, correct?

A. Yes.

Q. And what was the condition that caused -- that required him to have surgery in your view?

A. Well, I think he was having a great deal of difficulty with the suprapubic catheter and wanted a continent urinary diversion, and so a catheterizable pouch was fashioned surgically for him to allow him to have a drainage system that he would periodically need to catheterize but that would avoid the unpleasantry of having to catheterize through the penis.

Q. And are you familiar with the practice at Western Urology -- Western New York Urology Associates?

A. The practice itself?

Q. Yes.

A. Yes, I know them.

Q. Okay.

A. Yes, I know of them.

Q. And do you know Dr. Teresa Danforth?

A. I do not know her personally but I know of her.

Q. And what's her reputation in the field, if you know?

A. Fine, I believe. She's a urologist who specializes in bladder augmentation.

Q. And do you know Dr. Bodkin of that practice?

A. Yes, I do. I know of him, yes.

Q. And what's Dr. Bodkin's reputation in the field, if you know it?

A. As far as I'm concerned, it's fine.

Q. So you said that the condition that required the bladder augmentation surgery was that Mr. Raymond was having difficulty with the suprapubic catheter. Why did he need a suprapubic catheter at that point in 2020?

A. Well, he was unable to empty his bladder on his own and what he could have had -- he could have intermittently catheterized himself but he

was opposed to that. The bladder was defunctionalized; it couldn't empty on its own. And so some form of drainage had to be affixed. A number of different types of urinary diversions. He after consultation with the physicians at Western New York decided that that would fit into his lifestyle as best as any. That's my impression.

Q. And do you agree with the course of treatment that Western New York Urology Associates pursued here out of the range of options that you just mentioned were available?

MR. MACKEY: Objection.

A. Yeah, I believe that that was an appropriate decision based on patient's lifestyle and the physician's expertise.

Q. And why was Mr. Raymond unable to empty his bladder on his own at the point where he ended up having that surgery in 2020?

A. He had a neurogenic bladder as defined originally in 2017.

Q. And when you said that it was appropriate based on the patient's lifestyle and the physician's, you know, expertise in that area, why do some patients opt to have this kind of augmentation surgery as opposed to self-catheterization in your

experience?

A. Well, he, from the very beginning the records indicate to me that he was not receiving intermittent catheterizations very easily. Sometimes it can be a little bit uncomfortable for a patient to catheterize themselves through the normal urethra orifice. And so in an effort to provide some degree of continence, a catheterizable pouch can be developed or a continuous urinary diversion which is called an ileal conduit. That's a bag that's fit on the side of the abdomen to which the urine continuously drains. And being a young man, he elected for something a little bit more cosmetic.

Q. And is that something you see in other younger patients, that they don't want to have an external bag, so they opt for this kind of procedure?

A. Yes.

Q. And so what is the prognosis for somebody who has this type of surgery at the age that Mr. Raymond did? How will this disease progress?

A. Well, it shouldn't. As long as he maintains a good healthy ability to intermittently catheterize that pouch, it should act very much similar to what his normal anatomy was and so there is no suggestion that it would get any worse.

Q. So can you just explain to me as a layperson what exactly the pouch is? It's not an external bag that's holding urine, right? It's is it inside his body? What exactly does he have?

A. You basically take segments of the bowel and fashion a new bladder. In this case, you will remove parts of the bladder and affixed a bowel which will approximate the same capacity that a normal bladder will. And because of the segments of bowel that are used, it could be fashioned in a way that it won't drain continuously but that the patient would have to intermittently drain the pouch just as if you were to go excuse yourself from a cocktail party and void on your own. They will have a catheter. They'll carry a catheter with them and they'll intermittently catheterize that pouch into a receptacle.

Q. How -- I'm sorry, go ahead?

A. Basically it's just using a catheter and placing it through the little stoma which comes out in the lower abdomen. It goes into the new bladder. The bladder is drained. They take the catheter, put it back in their pocket or purse and go about their business.

Q. That's incredible. So the stoma

meaning he has an opening in his stomach to allow access to the new constructed bladder?

A. That's correct.

Q. And so he attaches a catheter to the stoma which connects into the new bladder and brings the urine out that way; is that correct?

A. Well, he doesn't attach it. He just passes the catheter in through that opening. The bladder is decompressed and the catheter is simply removed.

Q. Obviously you're not walking around with an open wound on your abdomen all the time. How does that sort of opening into the body stay sanitary? What does that look like?

A. It's only about the diameter of one thumb. And more often than that because it's a mucous membrane exposed to the outside, patients will have a small removable Perry pan cover it just to keep it from irritating your clothing.

Q. And is this a surgery that you perform, Dr. Valvo?

A. Yes.

Q. And so the best outcome is that going forward Mr. Raymond will have to engage in this catheterization process in order to have normal

urologic function; is that correct?

MR. MACKEY: Object to form.

A. That is correct.

Q. And how does the -- what's the expectancy of how long one can -- how long such a reconstructive bladder can function for somebody for?

A. Well, I think as long as a patient or some designee of a patient can catheterize that pouch, indefinitely. In cases where a patient may be rendered unable to catheterize themselves, a catheter can be simply inserted and left indwelling for a period of time and then it can be simply changed. So it's something that can be managed quite easily with unskilled nursing, actually.

Q. So as you note in your report, Mr. Raymond is 32 years old. Would you expect that the augmented bladder that Dr. Danforth created in 2020 will last for the rest of his life potentially?

A. Yes.

Q. Okay. And does he -- does Mr. Raymond face any particular risks as a result of being someone who has an augmented bladder as opposed to his original bladder?

A. Not to my knowledge, no.

Q. For example, is it associated with, you

know, a shorter life expectancy or the development of any other kind of medical conditions or, you know, compromises to the body?

A. No. I have patients in my practice on 20, 30 and some even 40 years without any problems.

Q. Is the bladder augmentation surgery considered to be sort of one of the last options for somebody who is experiencing urinary retention?

A. No, there are a number of other options short of that. As I said before, intermittent self-catheterization is a modality that is oftentimes used, and we see patients who have -- who are paraplegic from a number of different causes who intermittently catheterize themselves. Some can actually void on their own by pressing down on their bladder. So there are more conservative measures but there are some who wish to have a little bit better control and therefore these surgeries have been devised to ameliorate those problems.

Q. Is it fair to say that you as a doctor like to exhaust other non-surgical options before you would perform a bladder augmentation surgery?

MR. MACKEY: Object to form.

A. I think if it's appropriate and the patient is willing. Sometimes however, one may need

to go to those extremes from the very beginning.

Q. I guess that's exactly what I'm asking. Is the bladder augmentation surgery an extreme in terms of it's a serious abdominal surgery that requires, you know, inpatient hospitalization?

A. Well, yes, it's a serious operation. Obviously it has its own pitfalls like everything we do, but when taken into context, it can provide a much more not only cosmetic but a very good therapeutic treatment for a neurogenic bladder.

Q. Okay. So, in your report, Dr. Valvo, I'm looking at page 2 of your report, the first paragraph, it looks like approximately fourth sentence and it says "Various medical conditions can cause neurogenic bladder which include all or any of the following: Stroke, Parkinson's disease, multiple sclerosis, spinal cord injury, spinal surgery, central nervous system tumors, trauma, medications along with alcohol and drug abuse."

What kind of trauma can cause neurogenic bladder in your experience?

A. Trauma can be delivered in a number of ways, either locally to the structures in the pelvis, the spinal cord or the brain.

Q. What's the definition of trauma that

you're using here medically?

A. I would say a significant injury from an object or objects external to the body but that also could mean surgical trauma as well.

Q. So what kind of trauma in your experience have you seen where patients have developed a neurogenic bladder?

A. Spinal cord injury, surgical trauma to the structures in the pelvis from an operation adjacent to the urinary tract and trauma to the brain itself.

Q. And for those cases where you've seen patients develop neurogenic bladder from trauma to the brain itself, what has been the mechanism of injury to the brain?

A. A forceful impact to the cranium invariably causing a fractured pelvis -- a fractured skull with significant injury to the brain matter.

Q. So what kind of impact to the cranium have you treated -- have you seen in patients who developed a neurogenic bladder as a result of that impact?

A. More often than not motor vehicle accidents.

Q. And so your opinion in this case, I

believe, is that Mr. Raymond's reports of being repeatedly punched in the head and neck would not rise to the level of forceful impact to the head that would cause a neurogenic bladder to develop; is that correct?

A. That is my opinion, yes.

Q. And essentially your view is that somebody being punched in the head isn't enough force to cause the body to develop neurogenic bladder? Am I understanding that correctly?

A. Well, if that were the case, I would have seen a lot more boxers with neurogenic bladders over the years and I've never seen one.

Q. Okay. So just so the record is clear, that is your view, that being punched in the head wouldn't cause neurogenic bladder?

A. Correct. Yes.

Q. And that opinion is based on your years in private practice and the patients that you've seen; is that correct?

A. And the basis of the medical record that I read, all of it.

Q. And what in the medical record that you read supports your view that it was -- being punched in the head wouldn't cause somebody to develop

neurogenic bladder?

A. The absence of any associated injuries or paralysis or documentation of a significant head injury. I did not see that at all.

Q. So I guess let's separate the medical literature and the medical record in this case. So is there anything that you're aware of in the medical literature which supports your view that punches to the head could never cause somebody to develop neurogenic bladder?

MR. MACKEY: Objection to form.

A. Now you're pluralizing it. You said punched to the head before now you are saying punches. Certainly you could have multiple injuries to the head based on punches that could cause underlying brain damage. That is a given. I did not see evidence of that in this case.

Q. Okay. So Mr. Raymond's allegation is that he was repeatedly punched in the head and that that's the mechanism of injury. Would repeated punches to the head in your view be a sufficient force to cause somebody to develop neurogenic bladder?

A. No. I can't say that, no.

Q. So, you're making a distinction it

sounds like between -- and can you explain why that's your opinion? Because I thought you said before that multiple impacts to the head could cause neurogenic bladder. Are you distinguishing between punches and some other type of force?

A. I'm drawing a distinction between the evidence that is in this case. And there is no evidence based on the photographs that we saw after Mr. Raymond was assaulted as he alleged of significant head trauma.

Q. Right. So what -- my question is a little different, Dr. Valvo. My question is, are you aware of anything in the medical literature that supports the view -- well, withdrawn.

So, just to go back to Mr. Raymond. Mr. Raymond, as I said, he claims that he was punched in the head and the neck multiple times with a fist. Is that force in your view sufficient to cause neurogenic bladder?

A. In this case, no, I cannot say that it is.

Q. Okay. But what about in another case? If somebody came to you and said I just got punched in the head ten times and now I have neurogenic bladder, is that something you think is possible?

MR. MACKEY: Objection.

A. Anything is possible, counselor, but realistically, I do not see that.

Q. Okay. So have you ever treated somebody who fell off a ladder who had a work-related injury where they bumped or hit their head and they developed neurogenic bladder?

A. No.

Q. What's the line in your mind between you're ability as a urologist to analyze the kind of forced mechanics that would be required to cause neurogenic bladder?

MR. MACKEY: Object to form.

A. Because every person I see we have to try to develop a mechanism of injury, what has caused this to happen and what is the mechanism whereby which this person has an objective problem. And I have not been illuminated by any of the experts to date as to what that mechanism of injury is.

Q. So what did cause Mr. Raymond to develop the neurogenic bladder?

A. I do not know.

Q. And so in your practice have you had other patients where they developed a neurogenic bladder and it was severe enough that they required

bladder augmentation surgery but you were never able to determine the precipitating event that caused the neurogenic bladder to develop?

A. Yes.

Q. And how common is that?

A. It's quite common. We see patients of all different ages and causes, and more often than not it's an elderly patient that may be on multiple medications or having some obstructive uropathology.

Q. Have you ever seen a 32-year-old patient or patient in their late twenties or early 30s spontaneously develop neurogenic bladder that you couldn't identify any causation for?

MR. MACKEY: Object to form.

A. Yes.

Q. You have seen that?

A. Yes.

Q. And is that common?

A. No.

Q. It's uncommon, correct?

A. Yes.

Q. So, what about the picture of Mr. Raymond that you mentioned did you find to be insufficient to show that he had sustained an injury substantial enough to cause neurogenic bladder?

A. Could you repeat that question, please?

Q. Sure. I believe you mentioned that you saw some photographs of Mr. Raymond that were taken after he was reported being assaulted; is that correct?

A. Yes.

Q. And you said that looking at those photographs was part of the reason that you felt that the force that had been applied to his head wasn't sufficient to cause neurogenic bladder. Did I understand your testimony?

A. That's correct, yes.

Q. And so my question was, what about those photographs that you saw made you conclude that the incident with the litigation had been insufficient to trigger neurogenic bladder?

A. For one, he appeared to be steady at gait. Number two, he had some minor abrasions on the, I believe it was the left orbit, some scratching on his upper torso. As I said, he was standing erect, holding up a sign and I believe a little bit of a smile. So it did not appear to be obtunded in any way.

Q. I'm sorry, what was the word you used?

A. Obtunded.

Q. What does that mean?

A. Down on the ground writhing in pain, inability to move extremities.

Q. Okay. Have you ever worked on a case involving people who were injured in a prison before?

A. Not to my recollection.

MR. MACKEY: Katie, with that question maybe just to clarify, has he ever worked as an expert in the case or has he ever had any patients that were injured in a prison? I don't know if Dr. Valvo or even if you're able to clarify that.

Q. Sure, Dr. Valvo your counsel made a good point. Have you ever served as an expert in a case where somebody who was injured in a prison?

A. No.

Q. And have you treated people in your practice who were injured in a prison?

A. Not to my recollection, no.

Q. One moment, Dr. Valvo. Just give me one second.

Okay. So, for a young person like Mr. Raymond who at the time this happened was 28 years old who develops neurogenic bladder in this sequence of events, can you explain at all how you approach understanding why the neurogenic bladder has

come about in this apparently spontaneous way?

MR. MACKEY: Objection to form.

A. Well, a good history and physical ought to be able to discern a most likely cause, may not prove it unequivocally, but it may help understand what caused it.

Q. And do you have a view about what the most likely cause is in this case even if you don't have a view of certainty or definitiveness?

MR. MACKEY: I'll object to form.

A. Well, I think if we go to a medical history report where Mr. Raymond was being evaluated for seizures -- and this was at the Upstate Medical Center -- in the end, I believe it was July 30, 2017, where in the medical report Mr. Raymond admitted to using illicit drugs, including marijuana. And so that might be an etiology as to what might have been going on.

Q. So, the idea is that the neurogenic bladder developed subsequent to or because of his use of illicit drugs? Is that -- am I understanding that?

A. That is a cause that was listed in a previous discussion as one of several options. Of course, if that were the case, one would want to

counsel the patient on discontinuing that habit.

Q. Have you seen any information in the record that suggests that Mr. Raymond was using illicit drugs when he was in prison in 2016?

A. That -- I'm pointing to that history and physical that was obtained at Upstate Medical and that was an admission by Mr. Raymond to the physician.

Q. Sure. And assuming the correctness of that and that Mr. Raymond did have a history of drug use dating back prior to 2016 for several years, would it be typical to see a several-year delay following somebody's use of drugs to their development of the neurogenic bladder?

A. The sentence reads "is using illicit drugs" not used.

Q. Are you aware of any medical literature or treatises or expert sources that would discuss the development of a neurogenic bladder as a result of illegal substance abuse?

A. Well, there are several. Medications play a very big part in our control of urinary -- of voiding symptoms. And you name the drug and you can come up with an act on the nerve system and in fact can cause with chronic use neurogenic type bladder.

Q. And is marijuana one of those drugs?

A. Marijuana is one of several.

Q. I see. So is it your most likely cause here, you know, as a doctor with the years of experience that you do have, is that Mr. Raymond developed his neurogenic bladder as a result taking marijuana?

MR. MACKEY: Object to form.

A. That is a cause, just as the others. I can't tell you for certain.

Q. Sure. Right. We're trying to look for the most likely cause for this illness, obviously. And you listed in your report, you listed -- well, let's go through it.

So Mr. Raymond did not have any evidence that he suffered a stroke, correct?

A. That's correct.

Q. And he did not -- he does not have Parkinson's disease; is that correct?

A. As far as I know, no.

Q. And he doesn't have multiple sclerosis, correct?

A. Correct.

Q. And he -- there is no evidence in the record that you reviewed that he has a spinal cord

injury; is that correct?

A. That's correct.

Q. He didn't undergo spinal surgery, correct?

A. Correct.

Q. He doesn't have a central nervous system tumor that's in the record that we know of, correct?

A. Correct.

Q. I'm going to set aside trauma because we've already talked about that and we have a disagreement on that one.

And so you write medications along with alcohol and drug abuse. So is that in your view the most likely explanations out of the ones you offered for Mr. Raymond's neurogenic bladder?

MR. MACKEY: Object to form.

A. I think by process of elimination, that is a leading candidate.

Q. Okay. And with respect to trauma, you said forceful impact to the cranium or multiple blows or multiple -- I don't want to say the wrong thing -- multiple impact? I'm not sure if that's what your words were, but that's another cause of neurogenic bladder but you ruled that out here because you don't

think the force was sufficient, correct?

A. That is correct. And evidence for that is an electroencephalogram obtained on 7/21/16.

Q. And what does that -- go ahead, please.

A. That is a normal EEG. Had there been significant brain trauma, that would invariably have caused an abnormality in the EEG report.

Q. Would you agree that people who suffer TBIs often have normal EEGs?

A. No, not that fresh. This was just a week after.

Q. A week after what?

A. The alleged incident.

Q. What's the date of the EEG you're referencing?

A. I'm sorry, you're correct. I'm sorry. I misspoke. That is in July 21st. The injury took place in September.

Q. Okay. So that's 10 months later, right?

A. Yeah.

Q. So is it possible -- first of all, let me ask you this Dr. Valvo: The issues we're talking about regarding injuries to the brain would seem to me as a layperson to be more in the expertise of a

neurologist. Would you agree with that?

A. No.

Q. So the symptoms of a TBI, how soon they would show up on a brain scan or an EEG, that in your view is not the province of an expert neurologist as opposed to an expert urologist?

A. We don't have any objective evidence.

Q. Right. I'm saying the area of expertise in general where one studies the cause of TBI, the evidence on brain scans, is that something that is within the province of expertise of a neurologist or a urologist?

A. I think probably a neurologist would be appropriate to answer that.

Q. So your view that about the possible emergence of symptoms of a TBI and when they would be reflected, that's really something that a neurologist is best positioned to opine on, would you agree?

A. That would be an appropriate opinion, yes.

Q. Okay. Now, in your view if somebody has a neurogenic bladder that's caused by the abuse of alcohol and drugs, when does it usually develop in relationship to the use of those substances? Is it at the same time? Is it later? How would you

characterize that?

A. Highly variable depending upon the quantity, the drug that's ingested. It can happen within an evening of an alcohol bingeing or it can happen over a chronic time period.

Q. So somebody could binge on alcohol to such a degree in one evening that they would develop a neurogenic bladder that might end up requiring a bladder augmentation surgery; is that your belief?

A. No, I didn't say requiring surgery.

Q. Okay.

A. He could develop a neurogenic bladder.

Q. Okay. So I guess in this case like for the degree of severity of this neurogenic bladder that ended up requiring this bladder augmentation surgery, what's the duration of the substance abuse that you would expect to see for that to result?

A. That can happen over months or years.

Q. Okay. How does your analysis in this case of the fact that you believe that being struck in the head several times or repeatedly with a fist was insufficient force to cause the neurogenic bladder, how is that impacted by the fact that Mr. Raymond had a prior history of TBI and epileptic seizures?

A. It is not. We have no underlying organic pathology of his brain. There may be some electrophysiological issues with seizure activity, but there is no demonstrable objective finding that would determine either from CAT scan or MRI to show any underlying brain disease. The structures that control voiding are in the deep part of the brain stem and are cushioned from blows such as he got from -- with normal brain matter and a very hard skull.

Q. Is this -- is what you just testified to, is that within your area of expertise as a urologist or is that more of the area of expertise of a neurologist?

A. When I look back at neurogenic bladder to try to come up with a cause, I think I can make a weighted decision on that.

Q. Fair enough. And so with respect to somebody who is neurologically compromised and has a prior history of TBI and has a prior history of seizure, how does that impact your analysis about what the level of force to the brain would be to cause somebody to develop neurogenic bladder sequela?

A. Well, I don't think it's additive or cumulative. I think an injury is such that it can

happen or not.

Q. Okay. Are you familiar with the fact that people who suffer from a history of traumatic brain injury are more vulnerable to subsequent traumatic brain injury?

A. Well, do we have good evidence for that here? Is it well-documented?

Q. I'm not asking you about this case. I'm asking you in general. Are you aware of the fact that if somebody has a prior history of traumatic brain injury, it makes them more vulnerable to suffering additional traumatic brain injury?

A. Yes.

Q. That's a well-recognized medical principle, right?

A. Yes.

Q. And are you aware that Mr. Raymond does have a documented history of TBI from a work-related injury in 2014?

A. I'm unsure of the documentation.

Q. So, in your view that the substance abuse explanation is the most likely one here for Mr. Raymond's neurogenic bladder, did any of the records that you reviewed support that assessment?

MR. MACKEY: I'll object.

Mischaracterizes previous testimony.

Go ahead.

MS. ROSENFELD: Well, that's important, so we should get it correct.

Q. Am I correct that using the process of elimination that we just discussed in your -- of the possible causes in your report, that it's your view that the substance abuse explanation for the cause of this neurogenic bladder is the most likely explanation of the available ones?

MR. MACKEY: Object to form.

THE WITNESS: May I answer?

MR. MACKEY: Yes.

Q. Yes.

A. Yes, and we have to simply look at his medical history form to document that.

Q. And so then just going back to the question I asked, is there anywhere that you saw in the records that you reviewed where any other doctors endorsed the view that the substance abuse that you noted, the marijuana use, was the cause of the neurogenic bladder?

A. No, but that was by Mr. Raymond's admission. He said he uses it.

Q. I understand. Accepting that

Mr. Raymond -- that it's reported that he said he used marijuana, I'm asking did you see in any of the records that you reviewed another physician reached the conclusion that the neurogenic bladder had been caused by substance abuse?

A. No.

Q. You're the only doctor that has that view that you've reviewed of the records before us?

A. That would be the case, yes.

Q. Okay.

MS. ROSENFELD: Can we just take a five-minute break, please?

MR. MACKEY: Sure.

MS. ROSENFELD: Thank you. Thank you, Dr. Valvo.

(Recess taken.)

BY MS. ROSENFELD:

Q. Dr. Valvo, I just want to clarify that with respect to your opinion about the causation of the neurogenic bladder by substance abuse as a likely or the likely explanation, are you talking about this is based on the report of active marijuana use in July 2017; is that correct?

A. The report indicates using illicit drugs including marijuana. So I have no reason to

believe it's confined to marijuana.

Q. Okay. Any other reference or information about substance abuse that causes you to form this opinion in addition to that July 2019 record that you've pointed to?

A. No.

MR. MACKEY: Katie, I think you said 2019. I think you mean --

MS. ROSENFELD: I'm sorry.

Q. Other than the July 2017 record that you pointed to from Upstate?

A. No.

Q. Okay. So, we're going to turn to the section of your report which is at the end of the second paragraph on page 2 where you write "What I mean to say is that light trauma to the head should not result in neurogenic bladder."

What do you mean that it should not result in neurogenic bladder? Does that it mean it cannot result in neurogenic bladder or that it's not typical that it would?

A. Not typical.

Q. So, is it your opinion that while it's not typical that light trauma as you define it would result in neurogenic bladder, you can't rule it out

as a cause of neurogenic bladder?

A. I think you can and I would say, once again, boxers do not demonstrate light trauma. And you would expect if this was a significant repeatable exercise, they would all have neurogenic bladder. And I've never seen one, so I cannot say in this case that the trauma was sufficient enough to induce a brain injury that resulted in neurogenic bladder. That's basically what I'm saying.

Q. I understand your opinion. I'm just focused on this language in your report about "light trauma should not result in neurogenic bladder". And so really what you mean here is that light trauma cannot result in neurogenic bladder; is that fair to say?

A. Yes, I would say that.

Q. Okay. I just want to look at the pictures that you referenced.

MS. ROSENFELD: I'm going to show these pictures and I'm going to mark them. And, Pat, I'll circulate the marked copies of these afterwards for clarity. But I'm going to mark as Valvo Exhibit 3 these documents that are Bates stamped 1540 to 1544.

(Valvo Exhibit 3, documents, Bates stamped 001540 to 001544, were deemed marked

for identification.)

MR. MACKEY: You're putting it up on the screen, Katie?

MS. ROSENFELD: Yeah. Yeah. Exactly.

BY MS. ROSENFELD:

Q. Dr. Valvo, can you see the photograph that's in front of you?

A. Yes, I can.

Q. Okay. So this is a photograph taken of Mr. Raymond at 5:15 p.m. on 9/14/2016 and at a page marked -- Bates stamped 1540.

So is this one of the photos that you're referencing that you reviewed?

A. Yes.

Q. Okay. And you reviewed all of these photos that we're looking at?

A. Yes.

Q. Okay. And this is your -- the photo to now on page 1543, this is the image where I believe you described the left -- I'm not sure what word you used, some injury to the left side of the face?

A. Orbit. It's an orbital abrasion.

Q. Okay. And is that --

A. Yes.

Q. The orbital abrasion is kind of to --

in the photograph to the left of the ear?

A. Yes.

Q. And does Mr. Raymond's eye appear to be shut, his left eye?

A. It does, yes.

Q. Okay. Now, what's your understanding of what time the incident, underlying incident occurred?

A. I can't tell you for certain. It was, I believe, sometime earlier in the afternoon.

Q. Okay.

A. Earlier afternoon or morning, I can't recall.

Q. Okay. So this is -- this photograph obviously was taken after the incident. So are you aware that Mr. Raymond testified that after he was assaulted, the officers cleaned his face before taking his photograph?

A. I believe I saw that in his testimony, yes.

Q. And which of these photos -- and I'll go slowly -- which of these photos is the one where you think that Mr. Raymond is smiling?

A. I did not know Mr. Raymond before. He looks like he's got kind of a general smirk, if you

will. It appeared to me that he was. That may be his normal countenance. That's what it appears to. But you can clearly see he's standing erect, his posture looks perfect.

Q. So which picture is it that you think that he's smirking in?

A. This one here with the swollen eye. But, again, that may just be his normal facial countenance. I've never seen him before. I don't know what he looked like before or after, but to me it looked like there is a small smirk on his face, that's all. That's my impression.

Q. Meaning that you think in this photo he looks like something is funny? I just want to understand your testimony.

A. That he's smiling. That he's smiling.

Q. Okay. You understand that -- withdrawn.

Okay. So you interpret these photos as showing Mr. Raymond to be slightly smiling; is that correct?

A. That's my impression. That's what I see.

Q. Okay. Did that factor into your opinion about the incident here?

A. None whatsoever.

Q. So I just want to direct your attention now to your report at page 2, to the last sentence of the large second paragraph, please.

A. Yes.

Q. You concluded "Review of the medical records from 9/13/16 and 9/14/16 indicated that Mr. Raymond did in fact experience grand mal seizures on both these days. The seizures were followed by aggressive agitation, confusion with combative behavior, undoubtedly had to be restrained by the guards for his own self-protection, but I do not believe there was significant brain injury caused from an external force that caused this individual to develop a neurogenic bladder."

Did I read that correctly?

A. Yes, you did.

Q. Okay. So your view is that whatever -- that the seizures he had on 9/13 and 9/14 did not cause him to develop neurogenic bladder; is that fair to say?

A. Yes, I believe so.

Q. And so, for example, the seizure he had on the 13th, you know, he reported after that he had tenderness to the neck, do you think that that was a

symptom at that point that he had neurogenic bladder?

A. No.

Q. Okay. You talk in your report at several different points that neurogenic bladder is a condition that develops over a length of time and is not an acute event. What is the length of time that you believe that neurogenic bladder generally develops over?

A. Well, it can develop in an acute event. It can develop either, really. I've seen patients who are insignificant have significant spinal injury, i.e. motor vehicle accident, and have a neurogenic bladder the next day. And many times it's more of a chronic causation.

Q. So, I'm looking at paragraph 2 of your report. I think this appears actually a couple times but in paragraph 2 of your report. You say "Absence: I'm reading in the middle of the second large paragraph, "Absence of sudden and severe trauma to the head, neck, spinal cord, a neurogenic bladder is a condition that develops over a length of time and is not an acute event."

So, I guess just to make sure I'm understanding, so you're saying that if you have a sudden and severe trauma to the head, neck, spinal

cord, one could develop neurogenic bladder as an acute event with your example being, for example, a motor vehicle accident?

A. In my experience, that is the case.

Q. Okay. And then I think I'm understanding this to say that neurogenic bladder can also be a condition that develops over a length of time in other manifestations; is that correct?

A. That is correct.

Q. Okay. And then it says "Once again, generally associated with a head injury that is of significant nature to affect other neurologic structures and not a light hick" -- H-I-C-K -- "to the head." Is that just a typo and it should say hit, H-I-T?

A. Yes.

Q. Okay. When you say "other neurologic structures," what do you mean?

A. Remember, the control for voiding function is at the brain stem located deep in the base of the skull. I do not know of any mechanism, external force that can solicit out just the brain stem and leave the rest of the brain matter intact. So there has to be a concomitant injury with other brain functions manifested such as paralysis,

inability to speak, some other neurologic symptoms other than a discrete neurogenic bladder.

Q. So and this is at paragraph 1 you're listing that in order to have a head injury sufficient to cause neurogenic bladder, you would also in addition to the fact of force to the head, you would want to see gait disturbance, difficulty with voluntary movements of the lower extremities, memory loss, aphasia and assorted other injuries depending on the full extent of the trauma; is that what you're referring to?

A. Some or all, yeah.

Q. What is aphagia, A-P-H-A-G-I-A?

A. It's the inability to provide -- to talk, to give -- make a sentence, have a thought process and communicated verbally.

Q. And you reviewed Dr. Leitch's report and Dr. Leitch concluded, as you know, that Mr. Raymond displayed other symptoms of neurologic deficits including confusion, memory problems, sleep problems, increased seizure activity, other things of that nature. Would those in your mind be other neurologic impairments that would go along with the neurogenic bladder finding?

A. Not necessarily. And I believe some of

those existed prior to the incident.

Q. Right. And so, for example, would you see increased seizure activity as a sign of a neurological impairment following a TBI that's consistent with neurogenic bladder?

A. Again, independent of neurogenic bladder but more consistent with a head injury.

Q. Did you have a chance to read Dr. Valvo's report in this case? I'm sorry, Dr. Vapnek's report in this case? I believe you said that was sort of No. 20 on your list.

A. Yes, I did.

Q. Okay. Do you have Dr. Vapnek's report available to you, Dr. Valvo?

A. Yes, I do.

Q. Okay. Great. So let's mark that it as Exhibit 4, Valvo 4, Dr. Vapnek's report.

(Valvo Exhibit 4, report of Jonathan M. Vapnek, M.D. dated December 15, 2021, was deemed marked for identification.)

Q. So if you can please turn, Dr. Valvo, to page 3.

A. Yes.

Q. So, you'll see it says "Defense urology expert". Do you see that on the bottom paragraph?

A. Yes. Yes. Yes.

Q. If you wouldn't mind just reading to yourself just to save our court reporter that paragraph down to the end of the report again and then just let me know when you've had a chance to do that, please?

A. Yeah, I have.

Q. Okay. So what would you say are your primary areas of disagreement with Dr. Vapnek's conclusions after reviewing this section of his report?

A. Well, I think he believes that this condition can arise spontaneously, de novo, if you will. I do not believe -- I do not agree with him that there was sufficient injury to the brain to cause a neurogenic bladder. I'm of the opinion that if there had been significant brain injury, this condition would have manifested itself much closer to the alleged incident than four months later. That's where we disagree.

Q. Can you just point to me to where he says it can occur spontaneously? I believe you had said that. I'm just not finding it quickly.

A. He believes "the severe dysfunction clearly began after the September 14th assault".

Q. Okay. And, well, you agree with that, right?

A. But it's implied here that it happened right away.

Q. Okay. But -- well, I'm not sure where you get that but just to make a clear record, you agree that the voiding dysfunction began after the September 14, 2016 event, correct?

A. I agree with that, yes.

Q. Okay. And let's go back to the first -- to the first paragraph -- the last paragraph of page 3, please.

A. Yes.

Q. Do you agree with Dr. Vapnek that "given the complexity of brain function, especially in patients with a prior history of traumatic brain injury that brain lesions can lead to bladder and sphincter dysfunction that led to urinary retention rather than urinary urge incontinence"?

A. So the question was, are you asking do I agree or disagree with him?

Q. Yes.

A. Yes, I agree it could cause issues, no question about it.

Q. And do you agree that "a subtle lesion

at that level could lead to urinary retention rather than detrusor overactivity with urge incontinence?

A. A subtle lesion, yes.

Q. Okay. And do you agree that with his statement that "Mr. Raymond developed multiple issues consistent with TBI such as headaches, difficulty with concentration and marked cognitive dysfunction"?

A. I do not have a basis for that.

Q. Okay.

A. Objectively.

Q. Okay. Do you agree that "the urodynamic study of November 2017 demonstrated a small capacity bladder without demonstrable detrusor overactivity"?

A. Yes.

Q. And do you agree that "a non-relaxing external sphincter due to CNS dysfunction can lead to detrusor acontractility and urinary retention"?

A. Yes.

Q. Okay. And do you agree with his view that "a more subtle brain injury could become clinically apparent over a longer period of time"?

A. Yes.

Q. And do you agree with his conclusion that given that he was incarcerated, it's more likely

that early signs of voiding dysfunction were missed, leading to his presentation at the emergency room in urinary retention four months following the injury?

MR. MACKEY: Object to form.

A. That's a possibility but I'm unaware of his surroundings.

Q. Okay. You're unaware of his surroundings, meaning you're unaware that Mr. Raymond was incarcerated when he was injured?

A. No, I know he was incarcerated but I don't know how things work in the jail system.

Q. Okay. Okay. And do you agree that you offer no alternative explanation for Mr. Raymond's severe voiding dysfunction that clearly began after the September 14, 2016 assault?

MR. MACKEY: Object to form.

A. Yes. Yes.

Q. Do you agree with that?

A. Yep. Yes.

Q. And do you agree that Mr. Raymond can no longer void on his own?

A. Yes.

Q. And do you agree that his damages are permanent?

MR. MACKEY: Object to form.

A. Yes.

Q. And do you agree that he'll need close urologic monitoring for life because of the complications -- substantial complication rate associated with major reconstructive surgery?

A. Yes.

Q. Okay. And I'm almost done, Dr. Valvo. Thank you. And my last couple of questions are, I just want to really make sure that I understand the basis for your opinion about the most likely cause that you can identify as being a substance abuse triggered neurogenic bladder. That is based on the July 2017 Upstate medical record showing that he admitted using substances, correct?

A. Yes.

Q. Is there any other evidence in the record that you're thinking of when you come to that conclusion that it's the most likely explanation for the neurogenic bladder?

MR. MACKEY: I'll object. Asked and answered.

A. That and the absence of any significant trauma.

Q. Okay. And the opinion that he didn't suffer significant trauma is based on the photographs

that we reviewed which we talked about and what else is it based on?

A. The lack of any objectivity, i.e. imaging scans or a neurologic evaluation after the alleged incident.

Q. And the neurologic evaluation that Dr. Leitch conducted you believe is insufficient because it's so far away in time from the event?

A. Yes.

Q. Do you think that her evaluation is unreliable in any other way or is it just your opinion that it's just remote in time?

A. It's my opinion that it's too far from the original incident, that it's too remote.

Q. Okay. But otherwise you don't have any issues with the neurologic exam that she conducted in terms of its thoroughness or what she did?

A. I do not.

Q. Okay. So, the photographs, the lack of imaging, and the lack of a close neurologic exam, those are the main evidence that you say support your view that there was insufficient trauma to cause the neurogenic bladder; is that correct?

A. Yes.

Q. Anything else that you didn't tell me

about that you relied on to make that opinion?

A. No.

Q. Okay. We can just sit here in silence for one minute. I won't even go off camera, but I just want to look at my notes. Okay?

A. Sure.

(Pause in the proceedings.)

MS. ROSENFELD: Okay. I don't have any more questions now, Dr. Valvo. Thank you very much for your time.

THE WITNESS: Have a nice day. Thank you.

THE COURT REPORTER: Mr. Mackey, do you wish to purchase a copy of this transcript?

MR. MACKEY: I think Katie is --

MS. ROSENFELD: We're providing a copy of the transcript to them.

(Witness excused.)

(Time noted: 10:56 a.m.)

C E R T I F I C A T E.

STATE OF NEW YORK )
:ss.
COUNTY OF NEW YORK )

I, CELESTE A. GALBO, a Registered Professional Reporter, Register Merit Reporter and Notary Public of the State of New York and State of New Jersey, do hereby certify:

THAT JOHN VALVO, M.D., the witness whose deposition is hereinbefore set forth, was remotely duly sworn by me and that such deposition is a true record of the testimony given by the witness.

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 18th day of March 2022.

_____
CELESTE A. GALBO, RPR, RMR

DEPOSITION ERRATA SHEET

Case Caption:

DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury that I have read the entire transcript of my Deposition taken in the captioned matter or the same has been read to me, and the same is true and accurate, save and except for changes and/or corrections, if any, as indicated by me on the DEPOSITION ERRATA SHEET hereof, with the understanding that I offer these changes as if still under oath.

_____

JOHN VALVO, M.D.

Subscribed and sworn to on the ____day of _____, 20__ before me.

_____

Notary Public,

In and for the State of New York

_____

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